IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

AETNA CASUALTY & SURETY COMPANY,
Plaintiff

V. 3:93CV139-B-D

DOROTHY CROSS HOOD, ET AL.,
Defendants

MEMORANDUM OPINION

On February 16, 1994, the United States Magistrate Judge entered an order in the above-styled interpleader action granting the plaintiff Aetna Casualty & Surety Company ("Aetna") leave to deposit funds into the court registry. The amount deposited on that date represented the face amount of an automobile insurance policy under which the plaintiff's insured was covered, less an amount representing monies previously paid out as expenses to the defendant Dorothy Cross Hood. The defendants are the wrongful death beneficiaries of Roger Neal Hood, whose death resulted from an automobile accident involving the plaintiff's insured.

On February 28, 1994, the defendants filed "Defendants' Exception to Order Granting Leave to Deposit Funds Into Court." The "Exception" sought to require the plaintiff to deposit the remaining proceeds of the policy together with interest at a rate of eight percent from the date of the complaint's filing." The plaintiff never responded to the motion seeking the exception and on April 14, 1994, this court granted the exception requiring the

plaintiff to deposit the proceeds together with the prejudgment interest then accumulated. Aetna promptly moved for reconsideration of that order arguing that an award of prejudgment interest was not appropriate. Prior to the defendants' motion seeking the exception, the issue of the defendants' entitlement to prejudgment interest was fully briefed and, in part, the subject of the defendants' February 3, 1994 motion for summary judgment. While the parties ultimately agreed that the defendants were entitled to summary adjudication as to the proposed distribution of the proceeds, and an agreed order granting partial summary judgment for the defendants was entered on May 9, 1994, the issue of the defendants' entitlement to prejudgment interest has yet to be resolved notwithstanding the court's April 14th, 1994 order requiring the deposit of an amount representing accrued prejudgment interest. Accordingly, by ruling upon the plaintiff's motion for reconsideration, the court will necessarily decide the issue that is the subject of the defendants' motion for summary judgment. No relevant facts are in dispute.

DISCUSSION

Aetna filed its complaint in interpleader on September 2, 1993, pursuant to Fed. R. Civ. P. 22. There being the requisite amount in controversy and complete diversity between the plaintiff and defendants, jurisdiction is proper under 28 U.S.C. § 1332.

In the instant case, the issue as to the defendants'

entitlement to prejudgment interest is governed by the law of Mississippi. Canal Ins. Co. v. First General Ins. Co., 901 F.2d 45 (5th Cir. 1990). While the court has found no Mississippi case directly on point with this issue as a general proposition, prejudgment interest is allowed by Mississippi law under a variety of circumstances. See City of Moss Point v. Miller, 608 So. 2d 1332, 1336 n.4 (Miss. 1992) ("Prejudgment interest may be granted (1) pursuant to a statute, (2) if a provision in a contract provides or (3) where the proof is sufficient to support an award of punitive damages"); Aetna Casualty & Surety Co. v. Doleac Elec. Co., 471 So. 2d 325, 331 (Miss. 1985) ("Under Mississippi law prejudgment interest may be allowed in cases where the amount due is liquidated when the claim is originally made, or where denial of the claim is frivolous or in bad faith").

In contending that it should not be held liable for interest on the funds accruing after its unconditional offer to tender the funds into the court's registry, Aetna urges the court to follow the decision of the Fifth Circuit Court of Appeals in the case of Murphy v. Travelers Ins. Co., 534 F.2d 1155, 1159 (5th Cir. 1976), wherein that court applying Texas law stated the following:

> Once a stakeholder makes an unconditional offer to give up possession of a disputed fund, it ceases to exert that dominion over the money sufficient to justify an obligation to pay interest thereon, and the rule is that once such an unconditional tender is made, any liability for interest ceases as of the date of tender.

Murphy, 534 F.2d at 1165 (quoting Phillips Petroleum Co. v. Adams, 513 F.2d 355 (5th Cir. 1975)). The dispute in Murphy involved entitlement to interest accruing after the insurer deposited the face amount of the policy to which rival claimants claimed an interest. Finding that, under Texas law, "[p]ayment of the proceeds into the registry of the court or an offer to do so is a sufficient 'unconditional tender' to terminate the claimant's right to interest following the tender," the appellate court reversed that portion of the lower court's judgment awarding interest "following deposit of the proceeds into the registry of the court." Id. at 1165. Because this case involves entitlement to interest following an offer to tender rather than a tender proper[1], it is factually distinguishable and of no persuasive force.

Notwithstanding the obvious differences between the case at bar and Murphy, Aetna follows with Mitchell v. Aetna Casualty & Surety Corp., 579 F.2d 342 (5th Cir. 1978), for what in essence is the proposition that Mississippi law will recognize an unconditional offer to tender funds into the court's registry as sufficient to terminate the defendants' right to interest following that offer.

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[1]Notably, the insurer did not "dispute the award of interest from the date of the insured's death (when the amount became due under the policy to whichever claimant established entitlement thereto) to June 12, 1973 (the date the full amount of the policy proceeds then remaining had been deposited with the court). The insurer had perfected its interpleader claim on April 5, 1973, over two months previous to the deposit. Murphy, 534 F.2d at 1158.

Far from recognizing this proposition, however, Mitchell simply applied the negative corollary to the rule stated in Doleac Elec. that where an amount is unliquidated at the time a claim to proceeds are made, prejudgment interest is generally not allowed. See Mitchell, 579 F.2d at 352. Finding that the insurer's denial of the insured's claim was not "frivolous or in bad faith," id., the appellate court affirmed the trial court's refusal to award prejudgment interest on a jury award in the insured's favor. Mitchell was not an interpleader action but, at any rate, the insured in that action initially refused the insurer's tender directly to him and at all times disputed what the insured ultimately deposited into the court. Mitchell does not in any way stand for the proposition that an unconditional offer to tender an amount into the court in Mississippi extinguishes any right to prejudgment interest on that amount.

While true that interpleader actions under Rule 22 do not require a deposit upon the instigation of the action, Murphy, 534 F.2d at 1159, it is likewise true that procedural rules such as Fed. R. Civ. P. 22 do not create substantive rights. The fact that a deposit is not required for the maintenance of a Rule 22 interpleader action will not protect the plaintiff who merely offers to deposit funds into the court from the assessment of prejudgment interest if otherwise proper.

Mississippi law allows for prejudgment interest where the

interpleading insurer concedes liability to the claimant but delays in payment of the amount not contested as due and owing to the claimant. Aetna Ins. Co. v. Natchez Hotel Co., 60 Miss. 818, 134 So. 582 (1931). In such circumstances, the award of interest "is not imposed as a penalty for wrongdoing; it is allowed as compensation for the detention of money overdue." Rubel v. Rubel, 114 Miss. 73, 75 So. 2d 59, 69 (1954); see also Work v. Glaskins, 33 Miss. 539 (1857).

The allegations of the interpleader complaint allege (1) the defendants are the wrongful death beneficiaries of the decedent Roger Neal Hood; (2) the plaintiff issued an insurance policy under which a vehicle involved in the accident which resulted in the death of the defendants' decedent was covered; (3) the plaintiff "has no further claim on the sum tendered"; (4) the plaintiff does not admit liability. In view of the plaintiff's denial of liability on the policy, the court cannot characterize the policy proceeds as liquidated in the sense that a dispute remains as to any party's entitlement thereto.

Finding no controlling authority on point, the court turns to the principal case cited by the defendants, Gelfgren v. Republic Nat. Life Ins. Co., 680 F.2d 79 (9th Cir. 1982). The Gelfgren court set out four factors for the court to consider in determining whether prejudgment interest should be awarded to the claimant where the insurer files an interpleader action under Fed. R. Civ.

P. 22 yet fails to deposit the funds sought to be interpled upon the filing of the interpleader:

> (1) whether the stakeholder unreasonably delayed in instituting the action or depositing the fund with the court; (2) whether the stakeholder used the fund for his benefit and would be unjustly enriched at the expense of the claimants who have claim to the fund; (3) whether the stakeholder eventually deposited the fund into the court registry.

Gelfgren v. Republic Nat. Life Ins. Co., 680 F.2d at 82 (citations omitted).

Turning to the circumstances of the case at bar, the court finds that the plaintiff has not unreasonably delayed in interpleading the funds into the court registry. Nine (9) months passed prior to Aetna's moving to deposit the funds. Although one suit was pending against Aetna's insured prior to the instigation of the interpleader action, during the time prior to the deposit, a second lawsuit was commenced against the plaintiff's insured, both suits for which the plaintiff was providing a defense. Under such circumstances, the nine-month delay was not unreasonable.

While the plaintiff has had full use of the money for the intervening period prior to deposit, the same cannot be said to have unjustly enriched the plaintiff inasmuch as the policy proceeds cannot be characterized as "money overdue," Rubel, 75 So. 2d at 69, since a dispute remains as to the claimants' entitlement to any or all of the interpled funds. Finally, the fact that the plaintiff has actually made the deposit with the court, while under

no legal obligation to even bring this action at this time,[2] weighs in favor of the plaintiff's position that an award is not proper. Accordingly, the court finds that an award of prejudgment interest to the defendants is not warranted in this cause and, accordingly, grants the plaintiff's motion for reconsideration. The order granting the defendants' exception will be vacated and the defendants' motion for summary judgment on this remaining issue will be denied.

An order in conformance with this memorandum opinion will issue.

THIS, the _____ day of January, 1995.

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NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE

[2]Although clearly within its best interests to do so in light of the policy provisions, particularly Section III Subsections (6) and (7) which address the circumstances by which the insurer would become liable for the payment of prejudgment interest.